IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

OP.No. 3801 of 2003(C)

PETITIONER:

THE MALABAR PRODUCE EXPORT CO.,
TEMPLE ROAD, WEST HILL, KOZHIKODE,
REPRESENTED BY ITS PARTNER, P.V.ABDUL KHADER,
S/O. LATE C.P.KUNHAHMMED, 1/4068, MALABAR HOUSE,
EAST HILL, KOZHIKODE.

BY ADV. SRI.PHILIP ANTONY CHACKO

RESPONDENTS:

1. STATE OF KERALA,
   REPRESENTED BY ITS CHIEF SECRETARY,
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
   COLLECTORATE, CIVIL LINES, KOZHIKODE.

3. THE ASST. COMMISSIONER (ASSMET) V,
   SPL. CIRCLE II, SALES TAX OFFICE, CALICUT.

4. THE DEPUTY TAHSILDAR,
   REVENUE RECOVERY, SALES TAX, KOZHIKODE.

5. THE VILLAGE OFFICER,
   NAGRAM VILLAGE, KOZHIKODE (DT.).

BY GOVERNMENT PLEADER SRI GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.6701/2003 IN OP.NO.3801/2003

Dismissed

24/5/2007 Sd/-
P.R.Raman, Judge.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE PLAINT DATED NIL OCTOBER, 1988 O.S.NO.876/88 FILED BEFORE THE MUNISFF'S COURT II, KOZHIKODE BY THE PETITIONER.

EXT.P2 TRUE COPY OF THE JUDGMENT DTD. 30/10/1991 IN O.S.NO.22/91 AND O.S.NO.466/88 BY THE ADDL. MUNSIFF OF KOZHIKODE.

EXT.P3 TRUE COPY OF THE DECREE DATD 30/10/1991 IN O.S.NO.22/91 BY THE ADDL. MUHNSIFF'S COURT, KOZHIKODE-1.

EXT.P4 TRUE COPY OF THE REPLY DATED 1/8/1997 SENT BY THE PETITIONER TO THE 4TH RESPONDENT.

EXT.P5 TRUE COPY OF THE REPLY DATED 16/9/1998 SENT BY THE PETITIONER TO THE 3RD RESPONDENT.

EXT.P6 TRUE COPY OF THE REPRESENTATION DATED 4/4/02 SENT BY THE PETITIONER TO THE SECRETARY, SALES TAX APPELLATE TRIBUNAL.

EXT.P7 TRUE COPY OF THE DEMAND NOTICE DATED NIL SERVED ON THE PETITIONER ON 27/12/2002 ISSUED BY THE 4TH RESPONDENT TO THE PETITIONER.

EXT.P8 TRUE COPY OF THE DEMAND NOTICE DATED 16/10/2002 SERVED ON THE PETITIONER ON L27/12/2002 ISSUED BY THE 4TH RESPONDENT.

EXT.P9 TRUE COPY OF THE LETTER DTD.29/6/1978 SENT BY THE TAHSILDAR, KOZHIKODE TO THE 3RD RESPONDENT.

EXT.P10 TRUE COPY OF THE ASSESSMENT ORDER DTD. 25/7/98 FOR THE YEAR 1997-98 PASSED BY THE 3RD RESPONDENT AND ISSUED TO THE PETITIONER.

EXT.P11 TRUE COPY OF THE ORDER DTD. 14/8/97 PASSED BY THE 3RD RESPONDENT AND ISSUED TO THE PETITIONER.

RESPONDENTS' EXTS:

EXT.R3(A) TRUE COPY OF THE RELEVANT PAGE OF THE REVENUE RECOVERY REGISTER.

EXT.R3(B) TRUE COPY OF THE COMMON JUDGMENT OF THIS COURT IN TRC.228/86 AND CONNECTED CASES.

P.R.RAMAN, J

O.P.NO.3801 OF 2003

Dated this the 24th day of May, 2007

JUDGMENT

M/s.Malabar Produce Export Co., Kozhikode is the petitioner herein. It is an assessee under the Central Sales Tax Act. It is aggrieved by Exts.P7 and P8 notices issued under the Revenue Recovery Act demanding an amount of Rs.8097/- towards the arrears of tax due for the year 1968-69. The disputes relating to the other assessment orders are the subject matter of appeals before the Appellate Tribunal as T.A.Nos. 176/77 and 177/77 which were challenged before this Court in T.R.C.Nos.228 & 229/1986. This Court by its judgment dated 25/8/1987 allowed the revisions filed by the State and remanded the matter for fresh consideration by the Assessing Authority. It is also directed that an opportunity of being heard to the petitioner herein. But according to the petitioner, pursuant to the order of remand passed by this Court in the above-said revision cases no fresh notice was issued, no opportunity of hearing was afforded and the revised assessment order, if any, passed was not served on him. Therefore, the petitioner impugns the demand as illegal, as no amount is said to be legally due, unless an assessment order is served on him. There is no averment in

the counter affidavit that the petitioner was heard in the matter before passing any revised order of assessment. It is also not shown before me that the revised order of assessment pursuant to the remand order was served on the petitioner by producing the files. In such circumstances, I am constrained to accept the contention of the petitioner that he has not been served with the order of revised assessment, pursuant to the remand order passed by this Court.

2. In the above circumstances, the demands as per Exts.P7 and P8 are liable to be quashed and I do so. It is open to the Assistant Commissioner (Assessment) (3rd respondent) to serve a copy of the revised order of assessment along with fresh demand to the petitioner and on failure to comply with the same, to proceed to recover the amount by fresh proceedings. It will be open to the petitioner to work out his remedies against the revised order of assessment by filing an appeal or revision, as the case may be, and also obtain interim orders as entitled to by him.

Original Petition is allowed as above.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

O.P.NO.3801 OF 2003

JUDGMENT

24th May, 2007